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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-431

RUFUS W. GOSNELL AND FIRST STATE NATIONAL BANK, PETITIONERS,

versus

ROBERT L. HOLSON, IRBY GRANT, VIRGIL WALL, HARVEY S. HOLMES, AND PHILLIP J. VAGNONI, INDIVIDUALLY AND REPRESENTING A CLASS OF STOCKHOLDERS SIMILARLY SITUATED OF THE FIRST STATE NATIONAL BANK, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

The Petitioners, Rufus W. Gosnell and First State National Bank, respectfully pray that a writ of certiorari issue to review the decision of the South Carolina State Supreme Court entered in this proceeding on June 19, 1975.

OPINIONS BELOW

The opinion of the South Carolina State Supreme Court is reported at —— S. C. ——, 216 S.E.2d 539, and is set forth in the Appendix, *infra*, at pp. 1a-4a. The opinion of the Court of Common Pleas for Saluda County is unreported and is set forth in the Appendix, *infra*, at p. 4a.

JURISDICTION

The decision of the South Carolina State Supreme Court was entered on June 19, 1975. No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U. S. C. § 1257(3) (1970).

QUESTION PRESENTED

Whether, for the purpose of venue in a transitory action not involving transactions of any branch office, a national banking association is located in every county where it has only a branch bank?

STATUTE INVOLVED

12 U. S. C. § 94 (1970): **Venue of suits**

> Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

STATEMENT OF CASE

This action by shareholders of First State National Bank (hereinafter referred to as "First State") was commenced in the Court of Common Pleas for Saluda County, South Carolina, during May, 1974. One Defendant, Rufus W. Gosnell, is a citizen and resident of Aiken County, South Carolina. The other Defendant, First State, is a national banking association with its main office and two branch offices in Aiken County and one branch office in Saluda County. First State operates no other branch offices.

Under South Carolina law, venue as to Rufus W. Gosnell is proper only in Aiken County unless venue as to First State is proper in Saluda County. S. C. Code Ann. § 10-303 (1962).

Both Defendants timely filed a motion for dismissal, pursuant to S. C. Code Ann. § 10-648 (1962), of the claims against them. This motion was grounded in part on the nature of the relief sought and in part on the Defendants' contention that venue under 12 U. S. C. § 94 (1970) could not be had in Saluda County, as First State was and is located in Aiken County. The Plaintiffs struck from the prayer all relief obtainable solely in federal court. On July 17, 1974, the Circuit Judge held that venue was proper, and the Defendants timely appealed that holding to the Supreme Court of South Carolina.

On June 19, 1975, the Supreme Court of South Carolina affirmed the decision of the Circuit Judge and held "a bank is *located* in any county where it has a branch." (App., *infra*, p. 4a) (emphasis in original).

The Petitioners seek certiorari to review this decision.

REASONS FOR GRANTING THE WRIT

National banks enjoy certain rights and privileges not available to state-chartered corporations, because the Congressional genesis of the former renders them exempt from most state requirements. *Van Reed v. People's National Bank*, 198 U. S. 554, 557 (1905). The national bank venue statute, 12 U. S. C. § 94 (1970), specifies the right of national banks to be exempt from most state venue statutes and provides that venue in a state court suit against a national bank is proper only in the city or county where the bank is located. This right, granted in 1864, is subject to two well-settled exceptions. The first was recognized in 1880, when Chief Justice Waite explained that Congress intended for the venue section to apply to ordinary transsitory actions but not to local *in rem* actions. *Casey v. Adams*, 102 U. S. 66 (1880). A short time later, the Court held that this exemption to suit in certain state courts is a privilege which may be waived by a bank. *First National*

Bank v. Morgan, 132 U. S. 141 (1889). The portion of the statute construed in *Morgan* has remained virtually unchanged since the time of that decision, and this Court has recognized no new exceptions to that statute. In its two most recent decisions construing section 94, *Mercantile National Bank v. Langdeau*, 371 U. S. 555 (1963), and *Michigan National Bank v. Robertson*, 372 U. S. 591 (1963), this Court has emphasized the continued vitality of that statute.

A. **Holdings Among the States Conflict.**

The problem in this case arises from the language of 12 U. S. C. § 94 which provides that proper venue in federal court lies in the district where the bank is "established," while in state court proceedings proper venue lies in the county where the bank is "located." Although this Court has never clearly defined either "established" or "located" within the context of branch banking, other courts have done so. In 1936, a federal district court held that a national bank is "established" only in the district containing its home office and principal place of business as stated in its charter. This Court rejected the petition for a writ of certiorari filed in that case. *Leonardi v. Chase National Bank*, 81 F. 2d 19 (2d Cir.), *cert. denied*, 298 U. S. 677 (1936). As a result of this decision, the *Leonardi* definition of "established" seems to have been widely accepted. *E.g.*, *Helco, Inc. v. First National City Bank*, 470 F.2d 883 (3d Cir. 1972); *Buffum v. Chase National Bank*, 192 F. 2d 58 (7th Cir. 1951), *cert. denied*, 342 U. S. 944 (1952); *Tanglewood Mall, Inc. v. Chase Manhattan Bank (National Association)*, 371 F. Supp. 722 (W.D. Va.), *aff'd*, 508 F.2d 838 (4th Cir. 1974); *General Electric Credit Corp. v. James Talcott, Inc.*, 271 F. Supp. 699 (S. D. N. Y. 1966).

This acceptance has produced a standard definition of "established" for federal venue purposes. State courts do

not enjoy such a uniform standard, however, because venue in state court suits is controlled by the key term "located" which has not been conclusively defined. As a natural result, the state courts are in disagreement as to the proper definition of the term "located."

Some state courts have held that the two terms "located" and "established" are equal, with the result that, absent waiver, a state court suit can be brought only in the county where the bank maintains its principal place of business.[1] These cases are diametrically opposed to the decision of a California court which held that a national bank is located in every county where it operates a branch bank, *Central Bank, National Association v. Superior Court,* 30 Cal. App. 3d 962, 106 Cal. Rptr. 912 (1973), even though this very liberal construction had been considered and rejected by a New York appellate court in *Gregor J. Schaefer Sons, Inc. v. Watson,* 26 App. Div. 2d 659, 272 N.Y.S. 2d 790, *rev'ing* 49 Misc. 2d 265, 267 N.Y.S. 2d 252 (Sup. Ct. 1966).

These two extreme positions have been synthesized in a decision holding that, in a suit involving transactions of a branch bank, proper venue is laid in the county in which the involved branch is maintained. *Security Mills, Inc. v. Wachovia Bank & Trust Co., N. A.,* 281 N.C. 525, 189 S. E. 2d 266 (1972). This holding was in the alternative to a very conclusory holding that a national bank is located in every county in which it maintains branches. However, by thoroughly explaining its extrapolation from the waiver theory first propounded by this Court in *Morgan,* the court in *Security Mills* established its moderate position that, by maintaining a branch outside of the county in which the

[1] *E.g., Ebeling v. Continental Illinois Nat'l Bank & Trust Co.,* 272 Cal. App. 2d 724, 727, 77 Cal. Rptr. 612, 614 (1969); *Lapinsohn v. Lewis Charles, Inc.,* 212 Pa. Super. 185, 240 A.2d 90, 92, *cert. denied,* 393 U.S. 952 (1968); *Tuthill v. George S. May Int'l Co.,* 55 Misc. 2d 542, 285 N.Y.S. 2d 317, 319 (Sup. Ct. 1967).

bank is "established," a national bank waives its right not to be sued in the county in which the branch is located in connection with transactions of that branch.

These three distinct positions are in addition to various state court decisions considering section 94 but not defining the term "located" as it applies to venue in a suit against a national bank with multi-county branches. Examples of these confusing decisions include cases in which the court determined whether certain specified acts constituted waiver of the right to be sued in the county in which the bank is located,[2] or of the right to be sued only in the state in which the bank is established.[3] Equally inapposite are suits brought in states which do not permit branch banking,[4] and a line of older cases in which section 94 is viewed as controlling jurisdiction rather than venue.[5] Language in this Court's decision in *Langdeau* leaves no question but that the courts considering section 94 as a jurisdictional statute were erroneous. 371 U. S. at 559-560. However, this Court has thus far declined to dispel the confusion resulting from three separate and incompatible definitions of the word "located" when used in the context of multi-county branch banking.

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[2] *American Nat'l Bank v. Magor*, 28 Colo. App. 522, 476 P. 2d 267 (1970); *Lichtenfels v. North Carolina Nat'l Bank*, 260 N.C. 146, 132 S.E.2d 360 (1963).

[3] *Nevada Nat'l Bank v. Superior Court*, 45 Cal. App. 3d 966, 119 Cal. Rptr. 778 (1975); *Douglass v. Industrial Nat'l Bank*, 30 Conn. Super. 117, 303 A.2d 359 (1972); *Holst v. Bank of America Nat'l Trust & Savings Ass'n*, 250 Ark. 815, 467 S.W.2d 397 (1971); *Lapinsohn v. Lewis Charles, Inc.*, 212 Pa. Super. 185, 240 A.2d 90, *cert. denied*, 393 U.S. 952 (1968); *Exchange Nat'l Bank v. Rock*, 197 So. 2d 52 (Fla. App. 1967); *Insurance Co. of North America v. Allied Crude Vegetable Oil Ref. Corp.*, 89 N.J. Super. 518, 215 A.2d 579 (1965); *Sulil Realty Corp. v. Rye Motors, Inc.*, 45 Misc. 2d 458, 257 N.Y.S.2d 111 (Sup. Ct. 1965); *Solum v. Farmers & Merchants Nat'l Bank*, 269 Minn. 431, 131 N.W.2d 231 (1964); *Zarbell v. Bank of America Nat'l Trust & Savings Ass'n*, 52 Wash. 2d 549, 327 P.2d 436 (1958).

[4] *E.g., Richter v. Plains Nat'l Bank*, 440 S.W.2d 76 (Tex. Civ. App. 1969).

[5] *E.g., DeCock v. O'Connell*, 188 Minn. 228, 246 N.W. 885 (1933); *Guerra v. Lemburg*, 22 S.W.2d 336 (Tex. Civ. App. 1929); *Brust v. First Nat'l Bank*, 184 Wis. 15, 198 N.W. 749 (1924); *Levitan v. Houghton Nat'l Bank*, 174 Mich. 566, 140 N.W. 1019 (1913).

B. **The Decision is Contrary To the Congressional Purpose Underlying the Statute.**

The venue requirements of section 94 were "prescribed for the convenience of [national banks], and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts." *Mercantile National Bank v. Langdeau*, 371 U. S. at 561-62, n. 12, quoting *First National Bank v. Morgan*, 132 U. S. at 145. The decision in *Michigan National Bank v. Robertson*, 372 U. S. 591 (1963), demonstrates the willingness of this Court to achieve the intent of Congress by construing this statute for the convenience of national banks with disregard for the inconvenience accruing to a plaintiff as a result. The South Carolina Supreme Court, on the other hand, abrogated the intent of Congress through its decision in this case.

The state court's reasoning began from two correct premises, that the requirements of section 94 are mandatory in a transitory action and that many lower federal courts have concluded that a national bank is established in "the county recited in the charter." (App., *infra*, p. 2a.) However, the court then declined to follow other courts which have held that a national bank is located only where it is established, declaring that such a holding would be inconsistent with the Congressional intent which spawned section 94. As rationale for this declaration, the court noted that "operations of [national] banks were very restrictive" in 1864 when the predecessor of section 94 was enacted. Because Congress subsequently permitted national banks to establish branches, the state court explained that it "must interpret the meaning of located in light of the statutory revisions which permits [*sic*] branch banking." (App., *infra*, p. 3a.) The court then stated that its decision was based on "a more realistic and reasonable evaluation

of the rights of the parties based on fairness" rather than on "somewhat arbitrary and antiquated concepts" (App., *infra*, p. 3a) and found that a bank is present "physically, organizationally, and transactionally" (App., *infra*, p. 3a) in every county in which it operates a branch. Therefore, the South Carolina Supreme Court decided that for venue purposes a national bank is located in any county where it operates a branch.

The effect of this decision is to impose a burden on all national banks operating branches in multiple counties in South Carolina. Not only is each such bank subject to suit in every county where it maintains a branch but, in addition, each suit may involve any transaction at any branch within the state-wide system or any matter of the bank's corporate existence. This broad scope of potential actions requires that all of the bank's documents, books, and other records be accessible for the drafting of pleadings and motions, preparation for trial, and trial. Because all of these potential actions may be brought in any county in which the bank operates a branch, at least one person in each such county must enjoy this unlimited access to the bank's documents, books, and other records.

In contrast to these requirements is the convenience resulting from liability to suit in only the bank's home county. The maintenance of all documents, books, and other records at one location minimizes the burdens imposed by, and the interruptions of bank business resulting from, production of bank records in response to suits. By opting for a holding which maximizes the burdens on the bank and disruptions of its business, the decision of the South Carolina Supreme Court clearly controverts the Congressional intent behind section 94.

C. The Decision Is Inconsistent With Previous Decisions of This Court.

In addition to being contrary to the Congressional intent behind section 94, the position adopted by the South Carolina Supreme Court in this case and by a California appellate court in *Central Bank, National Association v. Superior Court*, 30 Cal. App. 3d 962, 106 Cal. Rptr. 912 (1973), is inconsistent with previous decisions of this Court. In *Langdeau*, this Court provided the analytical framework within which questions concerning section 94 should be resolved. The only issue in that case "concerned the question of venue, *viz.*, in what state court a national bank could be sued." *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U. S. 156, 161 n.4 (1973). In *Langdeau*, two national banks with their home offices in Dallas County, Texas, were sued in Travis County as allowed by state statute. These two banks pled that they were immune from suit in Travis County, but the Texas Supreme Court rejected this plea because that court thought section 94 was permissive and had been repealed. *Langdeau v. Republic National Bank*, 161 Tex. 349, 341 S.W.2d 161 (1960). After a thorough study of the statutory and judicial history of section 94, this Court reversed the Texas Supreme Court on both grounds and held that the national bank venue provisions "must be given a mandatory reading," 371 U. S. at 562, and "are fully effective and must be recognized when they are duly raised." *Id.* at 567.

The decision leaves no question but that national banks must be afforded their venue rights, and a superficial reading of *Langdeau* may produce the conclusion that "located" is to be equated with "established." Indeed, some courts have cited that case as holding that a national bank is located in the county where the bank maintains its principal place of business as specified in its charter. *E.g., Cen-*

tral Bank, National Association v. Superior Court, 30 Cal. App. 3d 913, 106 Cal. Rptr. 696 (1973); *Tuthill v. George S. May International Co.*, 55 Misc. 2d 542, 285 N.Y.S. 2d 317 (Sup. Ct. 1967). Although this Court did remand *Langdeau* in order that the state court suit could be brought in the county where the defendant banks were established, each of the banks was located and established in the same county by virtue of the Texas statute prohibiting branch banking. Tex. Civ. Code, Art. 342-903 (1973). For this reason, the plaintiffs could not contend that the defendants were located in the county where the suit was brought, and this Court was not required to define either "established" or "located."

The ability of national banks to operate branches in South Carolina renders *Langdeau* factually distinct from this case, with the result that *Langdeau* is not clearly controlling precedent on all questions presented in this case. However, this factual distinction does not render irrelevant the forceful rationale underlying *Langdeau* and emphasized in the later decision in *Michigan National Bank v. Robertson, supra.*

Both of these decisions represent this Court's efforts to effect the intent of Congress to permit "suit to be brought [only] in the bank's home county." *Mercantile National Bank v. Langdeau,* 371 U. S. at 560. This Congressional purpose is apparently obvious, because this Court has termed the statute "in every respect, appropriate language" for Congress to specify the only state court in which a national bank could be sued against its will. *Id.* After making this statement, this Court explained how the *Casey* and *Morgan* decisions are consistent with this Congressional purpose.

In *Casey v. Adams,* 102 U. S. 66 (1880), local vis-á-vis transitory actions were deemed beyond the scope of the

venue statute. The reason for the *Casey* decision was expressed succinctly by that Court:

> Local actions are in the nature of suits *in rem*, and are to be prosecuted where the thing on which they are founded is situated. To give the act of Congress the construction now contended for would be in effect to declare that a national bank *could not be sued at all* in a local action where the thing about which the suit was brought was not in the judicial district of the United States within which the bank was located.

Id. at 68 (emphasis added). This Court found that the Congressional purpose behind the venue statute did not include an intent to bar suits where local law granted jurisdiction to a single forum. Rather, the statute was designed to limit severely the number of courts in which a national bank could be sued.

This limitation was intended to benefit the banks, so this Court ruled that a bank could waive this benefit under certain conditions. *First National Bank v. Morgan,* 132 U. S. 141 (1889). Since *Morgan,* this Court has declined to establish the criteria for determining waiver. However, it has demonstrated the importance of waiver by ordering courts, which had previously failed to do so, to determine whether a defendant bank voluntarily waived its venue right. *E.g., Michigan National Bank v. Robertson, supra.*

For these reasons, *Casey* and *Morgan* are not considered deviations from Congressional policy but instead define the application of that policy to certain factual situations. Neither of these factual situations is present in this case, however. The *Casey* decision does not apply in this case because the parties agreed in the Statement of the Case that the action was transitory rather than local.

(App., *infra*, p. 1a.) Waiver is not at issue because the state court did not discuss that question. Therefore, the decision involves merely a construction of section 94.

This Court has consistently held that section 94 must be construed narrowly. This policy is apparent even in the decisions recognizing the exemptions to the general requirements of the statute. In *Morgan*, this Court noted that "without indulging in conjecture as to the object of the exemption in question, it is sufficient that it was granted by Congress, and, if it had been claimed by the defendant when appearing in the Superior Court of Cleveland County, must have been recognized." 132 U. S. at 145. As shown above, the *Casey* exemption was limited to cases in which local law determined that the suit could be brought in a single court.

The recent decision in *Michigan National Bank v. Robertson*, 372 U. S. 591 (1963), demonstrates the Court's current commitment to achieve the purpose of "a congressional enactment permitting suit to be brought [only] in the bank's home county," *Mercantile National Bank v. Langdeau*, 371 U. S. at 560, when the suit is transitory. The plaintiff in *Robertson* was a Nebraska resident who had purchased a mobile home from a Nebraska dealer. The defendant, a Michigan bank, financed the transaction, and the plaintiff claimed the financing contract was usurious under Nebraska law. This Court held that since state law permitted this type of suit to be brought in any county where the bank could be found, the suit was not "one to determine interests in property at its situs," 372 U. S. at 594, and therefore the *Casey* exception was inapplicable. Justice Black complained that, as a result of this decision, "people in Nebraska . . . must . . . go all the way to Michigan to try to vindicate their rights against the bank." *Id.* at 595 (Black, J., concurring). This result may seem harsh, but

the fact that plaintiffs had access to a court for redress of their alleged injury rendered *Robertson* beyond the scope of the *Casey* exemption. Because the Nebraska court had not determined whether the defendant bank had waived its venue privilege, this Court remanded *Robertson* for determination of that question.

The harshness of the result complained of by Justice Black indicates that the same principle applies when the key venue term is "located." This is so, because the inconvenience resulting from the requirement that suit must be brought in a foreign state is potentially far greater than the inconvenience caused by the requirement that suit must be brought in a specific county within the state.

The South Carolina Supreme Court ignored this Court's efforts and put the convenience of the plaintiff over that of the defendant bank. As discussed above, the result of this decision is that a national bank may be sued in South Carolina in any county in which it operates a branch, and the suit may involve any transaction at any branch as well as any matter of the bank's corporate existence. That court predicated its holding on "a more realistic and reasonable evaluation of the rights of the parties based on fairness." (App., *infra*, p. 3a.) While this consideration may be laudable, it produces a result inconsistent with this Court's constant holdings that section 94 was created for the convenience of national banks and that, absent voluntary waiver, a national bank shall be sued on a transitory matter only in the bank's home county.

D. **The Decision Results From Improper Statutory Interpretation.**

The South Carolina Supreme Court employed improper methods of statutory interpretation to reach a decision that is contrary to the Congressional intent behind section 94 and inconsistent with previous decisions of this

Court. The state court began by declaring "the restrictive venue provision of 12 USCA 94 . . . has been branded as a "horse and buggy statute in a supersonic age' [but] it is, of course, for the Congress and not the courts to repeal the statute if it has outlived its usefulness." (App., *infra*, p. 1a.) In spite of this initial disclaimer, the court decided that its function was to "interpret the meaning of located in light of the statutory revisions which permits [*sic*] branch banking" (App., *infra*, p. 3a.) to make the statute relevant to the "supersonic age" and, in the process, thwarted the Congressional intent behind the statute.

As the state court noted, the 1864 act establishing national banks originally provided that each national bank could operate an office at only one site. For over sixty years, national banks could maintain general business offices only at the places designated in their respective certificates or as allowed by special legislation. *First National Bank v. Missouri*, 263 U. S. 640, 658 (1924). Because national banks were thus limited in the number of places where offices could be maintained, these banks were automatically located and established in the same place. In 1927, however, Congress amended the statute prohibiting national banks from establishing branch banks, 44 Stat. 1228-29, *as amended*, 12 U.S.C. § 36 (1970), and by 1933 national banks were allowed to operate branch banks to the extent permitted "by the law of the State on State banks." 48 Stat. 189-190, *as amended*, 12 U.S.C. § 36(c) (1970). As a result of this amendment, the question arose as to whether a national bank could be located in a county in which it was not also established.

The state court concluded that the amendments to the national banking laws require "[t]he historical limitation with its rigid rule [to] give way." (App., *infra*, p. 3a.) However, this conclusion presupposes that Congress, by en-

acting the branch banking laws, intended to allow national banks to be sued in state courts in every county in which they operate branches. This presupposition requires the finding that Congress' failure to amend the statute to effect this intention is the result of oversight or neglect rather than of satisfaction with the "historical limitation." The conclusion that inaction for a period exceeding forty years results from other than satisfaction is taxing. Justice Sutherland spoke against equating inaction with failure to effect an intended amendment when he said:

> If the nonexistence of such branches or the absence of power to create them has operated or is calculated to operate to the detriment of the government, or in such manner as to interfere with the efficiency of such associations as federal agencies, or to frustrate their purposes, it is inconceivable that the fact would not long since have been discovered and steps taken by Congress to remedy the omission.

First National Bank v. Missouri, 263 U. S. 640, 659 (1924). The continuing viability of this principle of judicial restraint in this field is shown by the number of federal courts which have stated that section 94 may impose inconvenience on plaintiffs, but the remedy to this inconvenience lies in Congressional rather than judicial amendment. *E.g.*, *Klein v. Bower*, 421 F.2d 338, 342 (2d Cir. 1970); *Moreland v. Rucker Pharmacal Co., Inc.*, 59 F.R.D. 537, 543 (W. D. La. 1973). One federal court has added that inconvenience to plaintiffs resulting from this section is not a guidepost to statutory construction. *General Electric Credit Corp. v. James Talcott, Inc.*, 271 F. Supp. 699, 707-08 (S. D. N. Y. 1966).

In this vein, this Court recently faced a question involving a statute with a history somewhat similar to that of section 94. The Court declined to construe Congress' failure to amend the statute as other than satisfaction with

its operation, stating "the statutory provisions governing this case . . . are an historical patchwork subject to more than one interpretation. The entire matter is surely ripe for congressional consideration, for it is of continuing significance and the competing considerations of yesterday may not be those of overriding importance today." *Interstate Commerce Commission v. Atlantic Coast Line R. R.*, 383 U. S. 576, 586 n.4 (1966). The state court in this case should have exercised similar restraint, rather than attributing Congress' failure to amend section 94 to an inadvertent failure to realize that the purpose behind that section was not being effected.

E. **This Decision is Appropriate for Review.**

By denying a motion raising the question of venue, the decision below falls into a class composed of "ancillary orders which determine substantial rights of the parties which, if not promptly reviewed, will subject the party to irreparable harm." *United States v. McWhirter*, 376 F. 2d 102, 105 (5th Cir. 1967). In its numerous decisions in this area, this Court has noted the importance of the venue right. The decision in *Michigan National Bank v. Robertson*, 372 U. S. 591 (1963), reveals the vigilance with which this Court protects from erosion the right established in section 94. In *Robertson*, the Court effectively held that, if the bank had not waived its venue right, venue would lie only in the State of Michigan and the plaintiffs, although residents of Nebraska, would be forced to sue in Michigan for redress of their alleged injuries.

As has been stated, *Langdeau* holds that section 94 grants to each national bank the unalloyed right to be sued on transitory actions in state courts only in the county in which it is located. The statute was drafted to enable national banks to avoid the disruption, expense, and inconvenience of being tried in various counties within a state,

371 U. S. at 561-62, n.12. If the decision below is not corrected on review, First State will be subjected to the disadvantages which the statute was designed to avoid. The burden of these disadvantages is difficult to quantify, so monetary damages cannot be awarded to compensate the bank adequately for its troubles. For this reason, review of the case at this stage in the proceedings is necessary in order to protect the defendant national bank as well as to protect the right of the individual petitioner to have the case tried in the county of his residence.

This case, then, presents a question as to the proper exercise by a national bank of a substantial right granted it by Congress. Other state courts have considered this question and have rendered conflicting decisions. The South Carolina Supreme Court employed an improper method of statutory interpretation to achieve a decision that is contrary to the purpose for which the statute was drafted and is inconsistent with previous decisions of this Court construing that statute. Although Congress is the proper authority to amend the statute if amendment is necessary, this Court should serve as arbiter and resolve the conflict created by the varying state court decisions.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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